

## SENATE BILL No. 175

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-14-9.5; IC 31-16-8.5.

**Synopsis:** Paternity. Provides that a person previously ordered to pay child support is entitled to a new hearing if a genetic test establishes that the person is not the biological parent of the child.

**Effective:** July 1, 2004.

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January 6, 2004, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 175

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 31-14-9.5 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2004]:

4       **Chapter 9.5. Reopening of Paternity Action**

5       **Sec. 1. (a) Except as provided in section 2 of this chapter, a man**  
6       **against whom paternity is adjudged:**

7               (1) following a hearing under this article;

8               (2) by verified stipulation or joint petition under IC 31-14-8-1;

9               or

10              (3) by default judgment under IC 31-14-8-2;

11       **may petition the court for a paternity redetermination if a**  
12       **subsequent genetic test excludes the man as the biological father of**  
13       **a child.**

14       **(b) A petition must include the:**

15              (1) name of each child for whom paternity has allegedly been  
16              erroneously determined; and

17              (2) results of a genetic test performed at least ninety (90) days



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before the filing of the petition that finds a zero percent (0%) probability that the petitioner is the biological father of the child.

The results of a genetic test under subdivision (2) must be the original or a duplicate copy of the results as reported by the entity that performed the genetic test.

Sec. 2. A person may not file a petition for a redetermination of paternity under this chapter if the person, with knowledge that the person is not the biological father of the child, knowingly assumes the role of a father and provides support for the child or children named in the petition.

Sec. 3. (a) The court shall set the matter for a hearing upon determining that a petition filed under this chapter meets the requirements of section 1 of this chapter.

(b) The petitioner shall send notice by certified mail, return receipt requested, to the most recent address of:

- (1) the biological mother of the child; and
- (2) any man whom the petitioner reasonably believes is the biological father of the child.

A person to whom notice is sent under this section is a party to an action under this chapter.

(c) The court may not suspend child support payments during the pendency of an action under this chapter. However, the court may order child support payments held by the court until a final order is issued by the court.

Sec. 4. (a) The court, on its own motion, or on the motion of any party, may order additional genetic testing in a proceeding under this chapter.

(b) If a party to an action under this chapter requests additional genetic testing, the moving party shall pay the costs of the testing.

Sec. 5. A genetic test under this chapter is subject to the admissibility, evidentiary, and chain of custody requirements of IC 31-14-6.

Sec. 6. (a) A court shall issue an order abrogating a previous paternity determination if the court finds by clear and convincing evidence in a proceeding under this chapter that the petitioner is not the biological father of a child or children named in the petition.

(b) A court that issues an order under subsection (a):

- (1) shall cancel the current support obligation and any arrearage of the petitioner concerning the child or children named in the petition; and

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(2) may allow for continued visitation between the petitioner and child or children named in the petition.

(c) A court may require a biological mother in an action under this chapter to reimburse previously paid child support to the petitioner or a Title IV-D agency if the court determines by clear and convincing evidence that the biological mother knowingly or intentionally withheld information about the existence of other potential biological fathers of a child.

**Sec. 7.** A court shall require a petitioner to pay court costs and reasonable attorney's fees in a proceeding under this chapter if an order is not issued under section 6(a) of this chapter.

SECTION 2. IC 31-16-8.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

**Chapter 8.5. Redetermination of Child Support**

**Sec. 1. (a)** Except as provided in section 2 of this chapter, a man ordered to pay child support under this article may petition the court for a redetermination of child support if a subsequent genetic test excludes the man as the biological father of a child.

**(b)** A petition must include the:

- (1) name of each child for whom the petitioner has allegedly paid support in error; and
- (2) results of a genetic test performed at least ninety (90) days before the filing of the petition that finds a zero percent (0%) probability that the petitioner is the biological father of the child.

The results of a genetic test under subdivision (2) must be the original or a duplicate copy of the results as reported by the entity that performed the genetic test.

**Sec. 2.** A person may not file a petition for a redetermination of child support under this chapter if the:

- (1) person adopted the child or children (for whom child support is paid) during the person's marriage to the children's mother;
- (2) child or children for whom child support is paid were conceived by donor insemination (as defined in IC 16-41-14-3) during the person's marriage to the children's mother; or
- (3) person, with knowledge that the person is not the biological father of the child, knowingly assumes the role of father and provides support for the child or children for whom child support is paid.

**Sec. 3. (a)** The court shall set the matter for a hearing upon

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determining that a petition filed under this chapter meets the requirements of section 1 of this chapter.

(b) The petitioner shall send notice by certified mail, return receipt requested, to the most recent address of:

(1) the biological mother of the child; and

(2) any man whom the petitioner reasonably believes is the biological father of the child.

A person to whom notice is sent under this section is a party to an action under this chapter.

(c) The court may not suspend child support payments during the pendency of an action under this chapter. However, the court may order child support payments held by the court until a final order is issued by the court.

Sec. 4. (a) The court, on its own motion, or on the motion of any party, may order additional genetic testing in a proceeding under this chapter.

(b) If a party to an action under this chapter requests additional genetic testing, the moving party shall pay the costs of the testing.

Sec. 5. A genetic test under this chapter is subject to the admissibility, evidentiary, and chain of custody requirements of IC 31-14-6.

Sec. 6. (a) A court shall issue an order abrogating a previous child support order if the court finds by clear and convincing evidence in a proceeding under this chapter that the petitioner is not the biological father of a child or children named in the petition.

(b) A court that issues an order under subsection (a):

(1) shall cancel the current child support obligation and any arrearage of the petitioner; and

(2) may allow for continued visitation between the petitioner and child or children named in the petition.

(c) A court may require a biological mother in a proceeding under this chapter to reimburse previously paid child support to the petitioner or a Title IV-D agency if the court determines by clear and convincing evidence that the biological mother knowingly or intentionally withheld information about the existence of other potential biological fathers of the child or children named in the petition.

Sec. 7. A court shall require a petitioner to pay court costs and reasonable attorney's fees in a proceeding under this chapter if an order is not issued under section 6(a) of this chapter.

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